

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Implementation of the Pay Telephone)

Reclassification and Compensation)

Provisions of the Telecommunications)

Act of 1996)

CC Docket No. 96-128

COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL
ON COLORADO PAYPHONE ASSOCIATION'S
PETITION FOR RECONSIDERATION

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Communications Council

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Pursuant to the Common Carrier Bureau's Public Notice, DA 99-1266, released June 25, 1999, the American Public Communications Council ("APCC") hereby comments on the Colorado Payphone Association's ("CPA") petition for reconsideration of the Third Report and Order, FCC 99-7, released February 4, 1999, and requests the Commission to issue an immediate clarification regarding one of the issues pending reconsideration.¹

¹ See also Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order 11 FCC Rcd 20541 (1996); Order on Reconsideration, 11 FCC Rcd at 21233 (1996) (together the "Payphone Orders"). The Payphone Orders were affirmed in part and vacated in part. See Illinois Public Telecom. Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997). See also, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Second Report and Order, 13 FCC Rcd 1778 (1997); remanded, MCI Telecomm. Corp. v. FCC, No. 97-1675 (D.C. Cir. May 15, 1998).

APCC strongly supports CPA's petition. It is critical for the Commission to correct the errors identified by CPA in the determination of the dial-around compensation rate, which have improperly reduced payphone compensation by several cents per call. In addition, the Commission must affirmatively require IXCs to implement targeted blocking capability, in order to ensure that the conditions deemed necessary for establishing a market-based compensation rate are in fact achieved.

In addition, as CPA points out, the Commission should reconsider its determination to allow carriers to deduct from a future compensation payment the difference between the compensation actually paid during the period from October 7, 1997 to the effective date of the Third Report and Order, which was subject to a \$.284 rate, and the compensation that would have been paid during that period if the new \$.24 (adjusted to \$.238 for purposes of retroactive application) rate established in that order had been in effect. As CPA has pointed out, such a retroactive true-up is not required by law and the equities in these circumstances do not support a change in the compensation.

In addition, in connection with the true-up question, there is a matter that requires immediate clarification pending action on CPA's petition. There appears to be a misunderstanding on the part of some carriers as to the compensation payments that are subject to a deferred true-up under the Third Report and Order. The Third Report and Order states:

We conclude that the current default compensation amount should apply . . . retroactively to the period between October 7, 1997 and the effective date of this Order (the October 1997 period).

Third Report and Order, ¶196. However:

Because most IXCs already have collected money from their customers to cover the cost of compensating PSPs, the IXCs will not

be substantially harmed by a delay in recovering their overpayment. At the same time, PSPs may be severely harmed if they are required to immediately refund substantial overpayment amounts to the IXC. Indeed, most PSPs have not yet received the majority of their payments for the Interim Period and do not necessarily have the resources to issue refunds to the IXC. We therefore conclude that IXCs may recover their overpayments to the PSPs at the same time as the PSPs receive payment from the IXC for the Interim Period. In other words, when an IXC calculates the amount owed to each PSP for the Interim Period, it should deduct from that amount any overpayment that it made to that PSP. Just as IXCs will be required to compensate PSPs for interest on the money due the PSPs for the Interim Period, IXCs will be allowed to recoup interest for overpayments to the PSPs for the October 1997 Period. The same rate of interest shall apply for both the Interim Period and October 1997 Period. In the event that the amount the IXC overpaid is larger than the amount it owes to the PSP for the Interim Period, the IXC may deduct the remaining overpayment from future payments to PSPs.

Third Report and Order, ¶198. Thus, even though the Commission found that IXCs should benefit from retroactive application of the new rate (a decision that APCC urges the Commission to reconsider, as discussed above), the Commission required that adjustments to the rate applicable to all periods up to the effective date of the Third Report and Order should be deferred pending a determination of compensation for the Interim Period, for which the PSPs have been underpaid, in order that “overpayments” and underpayments could be settled at the same time.

As the passages quoted above make clear, the period for which application of the \$.238 rate is deferred extends from October 7, 1997 to the effective date of the Third Report and Order, which is April 21, 1999. In other words, the application of the new rate is deferred for all calls made between October 7, 1997, the first day on which per-call

compensation was applicable, and April 21, 1999, the effective date of the Third Report and Order.

However, several carriers are taking the position that the new rate should apply immediately to all calls made from January 1, 1999 on. These carriers apparently reason that, because they did not actually *pay* compensation for calls made in the first quarter of 1999 (i.e., January 1 – March 31, 1999) until after April 21, 1999, the deferral of the application of the \$.238 rate should not apply to these calls.

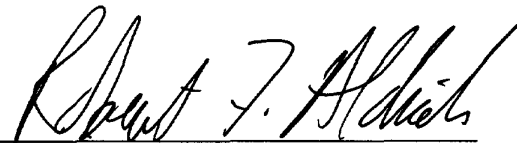
This is an erroneous reading of the Commission's Order. The Commission clearly defined the period of applicability of the \$.238 rate as the period from October 7, 1997 until the effective date of the Order. Since the beginning date of this period – October 7, 1997 – indisputably defines the period with respect to the date calls were made, not the date compensation was paid, the end date of this period – April 21, 1999 – must also define the period with respect to the date calls were made, not the date compensation was paid.

Furthermore, it would be irrational to read the Order as requiring deferral of the \$.238 rate based on the date compensation is paid. Such a reading would mean that carriers who managed to pay compensation for the first quarter of 1999 *prior* to April 21, 1999 would be required to defer application of the \$.238 to compensation for that quarter, while carriers who paid compensation after April 21, 1999 would be able to deduct the difference between the \$.284 and \$.238 rates immediately. To so penalize early payors would be arbitrary and capricious.

Therefore, the Commission should grant Colorado Payphone Association's petition for reconsideration. Pending reconsideration of the retroactive adjustment of compensation for periods prior to the effective date, the Commission should nevertheless clarify that such adjustment is deferred for all calls made prior to the effective date, even though compensation for such calls may not have been paid until after the effective date.

Dated: July 7, 1999

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich", written over a horizontal line.

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